"DEFINITION

"SEC. 426. For purposes of this part, the term 'State' means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.".

EFFECTIVE DATE

SEC. 3. This Act and the amendments made by this Act shall become effective on the date of enactment and shall be effective until the end of fiscal year 1989, at which time this Act and the amendments made by this Act shall be repealed.

## RECOGNITION OF SENATOR WILSON

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

Mr. WILSON. I thank the Chair.

## SENATOR EDWARD ZORINSKY

Mr. WILSON. Mr. President, I rise, as have so many on this floor in this past week, to say a few words as best I can to try to express my own personal feelings of loss at the departure of our dear friend, Senator Ed Zorinsky.

I was privileged to know Ed Zorinsky I think longer than most on this floor because he and I spent some years together as brother mayors, he as mayor of Omaha, I as mayor of San Diego. In those first years of our acquaintance, I quickly came to have an enormous respect and fondness for him. He was, as everyone privileged to know him came to learn, a man whose sometimes serious demeanor belied a mischievous sense of humor and one that allowed him, while always taking his job very seriously, to never take himself seriously.

Indeed, his last moments on this Earth were spent in entertaining the audience at the Omaha Press Club at their annual gridiron dinner with what I am told was a hilarious skit. In fact, I was privileged to see an early rehearsal of it, a rendition which Ed gave to those of us who were attending a benefit for the Hospice of the Valley in Phoenix, AZ, earlier this year.

The lyric—and I am not sure whether he had written this, but it sounds like his work—was one that was set to a popular tune which said, "I am the great pretender." It described the fact that he had switched parties and that he entertained the notion of switching back. I can only say that anywhere Ed Zorinsky was there was a potential party. Anytime anyone was privileged to spend a few relaxed moments with him they invariably were treated not only to his good humor but to his sense of humor and a sort of sparkle that animated what at other times could be a very sober man, when the feelings of warmth and kindness that so clearly stirred him so often took form in some specific action or some speech. He was, a reporter once told me, a rather quiet man to be a Senator, less loquacious than many of his brethren.

That may be true, but it is also true that when he spoke people listened; that when he spoke, he did so with energy and the passion of honest conviction, which made him not only a zealous but an extraordinary advocate for his State and for any cause in which he believed.

I was privileged to serve with him on the Agriculture Committee, and he remarked to me soon after my arrival in this Chamber that it was interesting and he thought ironic he and I as former large city mayors should find ourselves once again involved in public service but this time in an entirely different arena where our concerns had to do with not urban problems but trying to enhance farm exports, trying to make it possible for the American farmer to be productive and maintain a decent farm income.

Last Sunday, those of us who were able to do so flew out to Omaha in order to attend the funeral services for Senator Zorinsky, to be with his family, to console them insofar as it was possible for friends to do that. Senator HATCH made an eloquent and moving tribute in the eulogy which he gave at the services for Senator Zorinsky. Unhappily, I am told there is no record of the eulogy beyond that of memory. He did commit to paper a poem he had been inspired to write flying out to the services. If he has not yet done so, I will ask that Senator HATCH place that poem in the RECORD.

But I suppose all of us might find, however cogent we think we sometimes can be in argument, there are moments when the English language, with all of its infinite richness, seems a poor and inadequate vehicle to express the kind of feeling which comes when one is so rarely privileged to meet a man like Ed Zorinsky and to enjoy his friendship.

Even in this extraordinary body, in which I have felt privileged to enjoy the friendship of extraordinary men and women, Ed Zorinsky was outstanding in the literal sense of the word. His appeal was bipartisan, not only to his constituency but to the friends he had on this floor. It was an appeal that was based upon our perception of the quality of the man, the extraordinary human quality, not just the intelligence and not just the sparkle and wit and the ability to poke fun at himself that endeared him to all of us but the great warmth and kindness which he exhibited in so many ways, never seeking recognition or thanks for it but taking the reward of satisfaction that came to him from helping others, whether it was sending some good, aged Nebraska beef to a friend who had enjoyed his cooking of it at a barbeque or helping a colleague with a problem in drafting or in gaining support for a cause in which Ed Zorinsky shared the colleague's own belief.

To say that we will miss him so understates the feeling that this is one of the moments to which I referred a moment ago, when even the English language does not permit either me or, I think, anyone else on this floor to say how much we valued him in life, how much we will treasure his memory, how greatly we hope that the sadness of his passing and the pain it has caused will ebb in time for his family and his friends. It is certain that as time goes on and that pain recedes, the happy fact is that the memory of Ed Zorinsky for those who knew him will persist as brightly, as clearly, and as vividly as did his friendship for us in life.

Mr. President, I will take no more time, because I am afraid that neither time nor words could ever express what I feel and what I think many of us would like to say to those whom Ed leaves behind—his loving and wonderful wife, Cece, and his three marvelous children. I hope that they are consoled by some sense of appreciation of the great value her husband and their father has been to all of us.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Colorado, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislatve clerk proceeded to call the roll.

Mr BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

## RECESS UNTIL 1:14 P.M.

Mr. BYRD. Mr. President, I have conferred with Mr. DOLE.

I ask unanimous consent that the Senate stand in recess for 40 minutes.

There being no objection, the Senate, at 12:34 p.m., recessed until 1:14 p.m., whereupon the Senate reassembled when called to order by the Presiding Officer [Mr. GORE].

## ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, Senators may now speak out of order for up to 30 minutes each for 2 hours.

The Senator from Georgia is recognized.

## INTERPRETATION OF THE ABM TREATY

PART TWO: SUBSEQUENT PRACTICE UNDER THE ABM TREATY

Mr. NUNN. Mr. President, in a lengthy speech which I delivered on the Senate floor yesterday, I presented the first of three reports which I have prepared on the subject of the interpretation of the ABM Treaty. In those remarks, I addressed the crucial issues of the Senate's original understanding of the meaning of the treaty and the implications of that understanding for current executive branch conduct.

In my speech yesterday, I stated that I have concluded that the Nixon

administration presented the Senate with the so-called "Traditional Interpretation" of the treaty's limits on the development or testing of mobile/space-based exotics—that is, that such activities were banned. I stated that I have also concluded that the Senate clearly understood this to be the case at the time it gave its advice and consent to the ratification of the treaty. In my judgment, this conclusion is compelling beyond a reasonable doubt.

In my remarks yesterday, I also took sharp exception to the administration's recent claim that statements made by the executive branch to the Senate at the time of treaty ratification proceedings have "absolutely no standing" with other states party to such treaties. In my opinion, this claim is incorrect in the specific case of the ABM Treaty and is squarely in conflict with the constitutional role of the Senate.

Mr. President, today I would like to present a second report to the Senate on the ABM reinterpretation issue.

The report that I am delivering today addresses the available record of United States and Soviet practices since 1972. I stress the words, "available record," because we do not have the entire record. No one should be under a misimpression here. The record we have now is comprised of a 1985 analysis that was submitted by the Department of State to the U.S. Senate and several other documents.

This report addresses the available record of United States and Soviet practices—including their public statement—since the treaty was signed in May 1972. As I noted yesterday, both international law and U.S. domestic law recognize that the practices of the parties, including their statements, provide evidence of their intent with regard to the meaning of a treaty.

The record of United States and Soviet subsequent practice now available to the Senate is far from comprehensive. For example, the Senate has no access to statements made by American and Soviet officials in the 1972-85 timeframe in the course of negotiations in SALT II, START, INF, or the Standing Consultative Commission, known as the SCC. Nor does the Senate have access to statements made by United States or Soviet officials during summit meetings, foreign minister-level discussions, or routine diplomatic contacts.

So my statement today is based on what we now have available. There may be more information forthcoming.

I also stress, though, that this is the record that was examined by Judge Sofaer in arriving at his opinion. So to the best of my knowledge, what we have is what he had, and his opinion was derived therefrom.

President Reagan recently directed the State Department to conduct a thorough review of this issue. It is unfortunate that a rigorous administration study of subsequent practice—which has an important bearing on the whole question of treaty interpretation—was not conducted prior to such a major shift in U.S. policy. The administration has indicated that this study will be completed by April 30 and has promised that it will be submitted to the Senate for its review. Once the Senate has had an opportunity to review this second, or subsequent study, consultations will be—we hope conducted on its conclusions.

Mr. President, let me now review the various administration positions which have been put forward on this issue.

In an analysis submitted to the Armed Services Committee in a 1985 hearing, the State Department Legal Adviser, Abraham Sofaer, examined the record of subsequent practices. These conclusions were reiterated in an article which he published in the June, 1986, Harvard Law Review.

In both of these analyses, Sofaer claims that prior to the Reagan administration's announcement of the reinterpretation in October, 1985, the U.S. Government had not held a consistent position on the correct interpretation of the treaty provisions governing mobile/space-based exotics. In short, Sofaer denies that the traditional interpretation is in fact "traditional." Rather, Sofaer insists that the version of the treaty originally presented to the Senate was more consistent with the reinterpretation than the traditional interpretation and that successive administrations fluctuated back and forth between the broader and the more restrictive positions:

> Statements made during the post-ratification period have been mixed. Early statements tended to support the broader interpretation; several later ones presented a more restrictive view, some explicitly. At no time, however, was one interpretation universally accepted.

In support of the reinterpretation, Reagan administration officials have made other claims about subsequent practice. For example, in an appearance before the Senate Armed Services Committee on February 17 of this year, Secretary Weinberger was asked about the treaty's effect on the development and testing of mobile/space-based exotics. The Secretary replied that "you have a situation in which this point was never either specifically considered in the ratification process, nor has it been seriously considered in the years between, because the issue itself never had any importance since no one was on our side working on strategic defense." In short, Secretary Weinberger claims that not only did the issue of restrictions on exotics under the treaty never come up during the 1972 Senate ratification debate, but also that the issue never came up in the intervening years prior to the initiation of the strategic defense initiative [SDI].

The report which I released yesterday totally contradicts the first of Secretary Weinberger's assertions—that is, that the question of the treaty's applicability to the development, testing, or deployment of laser and other exotic ABM systems or components was never addressed during the 1972 Senate ratification proceedings. Today, I will discuss Secretary Weinberger's assertion that the question never arose until work began on SDI, as well as Sofaer's claim that there has been no consistent U.S. view since 1972.

First, let me address U.S. behavior under the treaty. The United States has not tested or developed a mobile/space-based ABM system or component of an exotic design. As late as 1985, the executive branch, in a Department of Defense report to Congress on the SDI Program, expressly endorsed the traditional view of the treaty as the basis for structuring its activities. This pattern of behavior is fully consistent with the traditional view of the treaty.

What about Soviet behavior under the treaty? Neither the Reagan administration nor any of its predecessors has asserted that the Soviet Union has developed or tested a mobile/space-based ABM system or component in contravention of the traditional view of the treaty. No such finding has ever been included in any compliance report submitted by this administration, including the report submitted on March 10, 1987, just 2 days ago.

I have examined the 13-year period from May 26, 1972, until October 6, 1985, with a view toward developing three categories of statements, and this goes to the question of U.S. statements about limitations on so-called exotics. The first category: Those which explicitly support the reinterpretation. The second category: Those which explicitly support the traditional view. The third category: Those which generally address the subject of testifying, development, or deployment of exotics but which do not explicitly support either interpretation.

The first category I will address is those which explicitly support the reinterpretation.

Judge Sofaer has not identified any official statements prior to October 1985 in which the U.S. Government expressly took the position that the treaty permitted testing and development of mobile/space-based exotics—not one statement that I have found.

The second category is U.S. statements that expressly support the traditional view—and there are many such statements. I will name a few of them today.

As noted in my remarks on Wednesday, the Nixon administration clearly took the position in its testimony to the Senate that the treaty banned mobile/space-based ABM's using exotics. This position was announced in public subsequent to the signing of the agreement by the heads of state, but prior to when the treaty entered into force.

With respect to statements made after the treaty entered into force, the available record of both official and unofficial U.S. statements directly contradicts both Secretary Weinberger's assertion that this issue never came up prior to the initiation of SDI and Judge Sofaer's claim that the U.S. position on the issue has not been consistent.

Mr. President, I will give just a few examples.

In 1975, Congress amended the Arms Control and Disarmament Act to require the executive branch to prepare an arms control impact statement for submission with requests for authorization and appropriation of defense and nuclear programs. The first two such submissions, for fiscal year 1977 and fiscal year 1978, were criticized as too general by the chairmen of the Senate Foreign Relations Committee and House Foreign Affairs Committee. A more detailed report was prepared for fiscal year 1979, involving an intensive interagency review process, including final review and approval by the National Security Council. As such, it represented the formal, coordinated views of the executive branch.

The fiscal year 1979 ACIS, which was the first arms control impact statement to address the issue of testing and development of mobile/space-based ABM's using exotics under the ABM treaty, contained the following key passage:

PBWs [particle beam weapons] used for BMD [ballistic missile defense] which are fixed, land-based could be developed and tested but not deployed without amendment of the ABM Treaty, and the development, testing, and deployment of such systems which are other than fixed, land-based is prohibited by Article V of the treaty.

This clear statement by the executive branch severely undermines the reinterpretation because it confirms the traditional meaning of the treaty as provided to the Senate in 1972, which was what I spoke to on yesterday.

The arms control impact statements submitted by the executive branch for fiscal year 1980 through fiscal year 1986, including those submitted by the Reagan administration, consistently took the position that mobile/space-based ABM's using exotics could not be tested and developed under the ABM treaty. I want to emphasize that these statements include express reaffirmation by the Reagan administration of the traditional interpretation. These statements were coordinated between the various departments of government.

The 1985 SDI report, submitted to the Congress in March 1985, contained an appendix on "The Strategic Defense Initiative [SDI] and the ABM treaty." As Sofaer has noted, this document "expressly embraced the restrictive interpretation." This one has been acknowledged by the administration.

It is further confirmation of the traditional view by the Reagan administration.

Let me now discuss several unofficial statements concerning negotiations.

In the years after the ABM Treaty entered into force, several books were published which provided unofficial accounts of the negotiations and descriptions of the meaning of the treaty's provisions. "Cold Dawn: The Story of SALT", published in 1973, was written by John Newhouse, a former Senate Foreign Relations Committee staff member, based on interviews with the participants. It has also been reported that Newhouse had direct access to classified Nixon administration documents. "Cold Dawn", which was widely regarded as the first comprehensive account of the negotiations, contains the following passages concerning exotics:

NSDM 127 [the instructions to the negotiators] banned everything other than research and development of fixed, land-based exotics. There remained to convince Moscow that the great powers should remove exotics future threats to stability, as well as the immediate ones.

* * * * *

Although the basic AMB agreement would be left for an eleventh-hour White House decision, the delegation managed a major breakthrough toward the end of January when the Soviets accepted the U.S. position on exotic systems. Back in the summer, Moscow's attitude, as reflected by its delegation, had been sympathetic. Then, in the autumn, it hardened, probably under pressure from the military bureaucracy. Washington was accused of injecting an entirely new issue. Moscow would not agree to a ban on future defensive systems, except for those that might be space-based, sea-based, air-based, or mobile land-based. The U.S. Delegation persisted and was rewarded. Land-based exotics would also be banned. The front channel had produced an achievement of incalculable value.

In 1974, John Rhinelander, legal adviser to the U.S. delegation, coauthored a book on the SALT accords which contains the following passages relevant to the exotics issue:

Article II defines an ABM system as "currently consisting of ABM launchers, interceptor missiles and radars." The prohibitions of the ABM Treaty are not limited to ABMs with nuclear warheads, although current ABM interceptors are nuclear-equipped. Articles II and III provide the treaty framework for the ban on "future ABM systems," which is spelled out further in an agreed interpretation.* [ABM Treaty, Initialed Statement D]

The future systems ban applies to devices which would be capable of substituting for one or more of the three basic ABM components, such as "killer" laser or particle accelerator. Article III of the Treaty does not preclude either development or testing of fixed, land-based devices which could substitute for ABM components, but does prohibit their deployment. Article V, on the other hand, prohibits development and testing, as well as deployment, of air-based, sea-based, space-based, or mobile land-based ABM systems or components, which includes "future systems" for those kinds of environments. The overall effect of the treaty is, therefore, to prohibit any deployment of future systems and to limit their development and testing to those in a fixed, land-based mode.

In 1977, Raymond Garthoff, the Executive Officer of the U.S. SALT I Delegation, published an article in International Security entitled, "Negotiating With the Russians: Some Lessons From SALT". In this article, he made only a cryptic reference to the treaty's limitations on exotics, noting:

Another example concerns the important provisions of the Treaty and associated Agreed Interpretation banning "futuristic" anti-ballistic systems (Article III and Agreed Interpretation [D].

In a letter to the editor published in the next issue of this periodical, a Rand analyst, Abraham Becker, argued that a reasonable reading of agreed statement D indicated that there were no limitations on exotics—including no ban on their deployment. Becker stated,

I am not a lawyer, but "subject to discussion" seems to me to impose no obligation other than, perhaps, to "discuss".

Becker then provided a critique of the traditional interpretation of the treaty which could well be seen as the precursor for the line of argument advanced by Judge Sofaer 8 years later, emphasizing the alleged redundancy of agreed statement D under the traditional interpretation:

One might ask why Agreed Interpretation [D] was necessary at all. Does not the introductory phase of Article III—"Each Party undertakes not to deploy ABM systems or their components except that"—rule out any deployments other than those permitted by the two following paragraphs? Why then is that special provision necessary for the contingency of exotic systems? The answer seems to be that the Treaty's core limitations in Article III relate to a specific form of AMB technology. Thus there was a need to adapt the limitations of Article III to possible future systems using alternative technologies.

However, this raises the more general problem that Article II, Paragraph 1 defines ABM systems for the purpose of this Treaty as consisting of ABM interceptor missiles, ABM interceptor missile launchers, and ABM radars. Presumably, Article V . . . also refers to such systems. There would, therefore, appear to be no prohibitions against developing, testing or deploying any system . . . that does not employ the canonical ABM triad. The only bar to such an interpretation consists of one word in Article II, Paragraph 1— "currently".

In a rebuttal published in the same issue, Garthoff replied as follows:

* * * Becker incorrectly interprets Article V as not applying to futuristic types of systems including components capable of substituting for ABM interceptor missiles, ABM launchers, or ABM radars. The reason for his erroneous interpretation is that he curiously assumes that "the only bar to such an interpretation consists of one word." The same could be said of the Ten Commandments. One word can indeed make a critical difference, and the word "currently" was deliberately inserted into a previously adopted text of Article II at the time agreement was reached on the future systems ban in order to have the very effect of closing a loophole to the ban on futures in both Articles III and V (and several others). The wording of the key introductory sentence of Article III

was also agreed on at the time and for that purpose.

While admittedly the result has a Rube Goldberg air to it, the interlocking effects of the final wording of Articles II and III and Agreed Interpretation [D] was intentionally devised and clearly understood—by both Delegations—to ban future "ABM systems based on other physical principles and capable of substituting for ABM interceptor missiles, ABM launchers, or ABM radars" unless specific limitations short of a ban were agreed on under the amendment procedures. The negotiating history fully supports the interpretation given by the Delegation, Mr. Rhinelander, and myself.

The publication of the Becker/Garthoff correspondence in the summer of 1977 set off a flurry of letters between a number of prominent U.S. strategic thinkers and former, as well as then-current, arms control officials, including Rhinelander, Garthoff, Paul Nitze, Donald Brennan (Hudson Institute), Gerard Smith, Paul Warnke, Sid Graybeal, and Herbert Scoville. A consistent theme in these letters was that the ABM Treaty prohibited the deployment of all exotics, and development and testing of such systems was authorized only for those which were fixed, land-based.

For example, in a July 8, 1977, letter to Brennan, Ambassador Nitze said:

The specific format of the Treaty, particularly of Article III * * * was to prohibit deployment of everything not specifically permitted. Future systems and their components could thus only be deployed pursuant to amendment of the Treaty after mutual discussion to work out limits appropriate to such future systems. It is therefore correct that Agreed Interpretation [D] was a work of supererogation and not strictly required.

Ambassador Nitze now asserts that the negotiating record supports the reinterpretation. He is the only principal negotiator who now holds that view. I shall return to this matter in my report on the negotiating record.

On July 13, 1977, Rhinelander stated in a letter to Brennan:

Article V, paragraph 1, prohibits the development, testing or deployment of a sea-, air-, space-, and mobile-land-based ABM systems or components. This encompasses present and future technology.

Finally, in a July 15, 1977, letter, which seemed to put the issue to rest within this circle of experts, Brennan conceded that his initial view of the treaty was incorrect:

In the face this level of analysis, not to mention the essential concurrence of Smith, Nitze and Garthoff, any further insistence that the Treaty does not necessarily ban the development of (among others) space-based exotic systems would have to be reckoned willful, indeed obstinate, stupidity.

Brennan also noted that he had "no reason to believe that the Soviets disagree with our interpretation of the Treaty."

The third category is comprised of U.S. statements supportive of either interpretation.

Let me first mention testimony to the House in 1972. During the House of Representatives' review of the SALT I accords, the question of the applicability of the ABM Treaty to lasers or other exotic ABM's was only raised on a few occasions and never in any detail. In general, statements by executive branch officials that did touch on this issue in the course of House testimony fell into one or the other of the two categories of imprecise or incomplete comments which I discussed yesterday in my report on the Senate ratification proceedings. These two categories are, first, a general statement to the effect that exotics cannot be deployed unless the treaty is amended but which provided no elaboration as to the limits on development or testing; and second, a general assurance that R&D on laser ABM's could continue, but which did not distinguish between fixed, land-based systems and mobile/space-based systems.

For example, on July 25, 1972, Ambassador Smith told the House Armed Services Committee:

An additional important qualitative limitation is the prohibition on the development and testing, as well as deployment, of sea, air, space-based and land-mobile ABM systems and components. Of perhaps even greater importance as a qualitative limitation is the prohibition on the deployment of future types of ABM systems that are based on physical principles different from present technology.

As I discussed yesterday, the reinterpretation presumes that if Smith had believed that the traditional interpretation had been agreed to, he would not have said only that futures were not deployable, he would have said that the development, testing, or deployment of futures was banned.

There are three major problems with the logic on which this analysis is based. First, the Smith statement is true and accurate on its face because under either interpretation deployment of exotics is banned. Second, it attempts to build a major case on what was not said. Third, if Smith had said what the reinterpretation postulates he should have said, he would have been wrong. Why? Because under either interpretation the development or testing of fixed, land-based exotics is permitted. Development or testing of mobile/space-based exotics is, of course, banned under the traditional interpretation.

I would note also that Secretary Rogers made a similar statement to the House Foreign Affairs Committee on July 20, 1972.

An example of the second category of statement, including a discussion of research and development, was a July 27, 1972, response by Admiral Moorer, Chairman of the Joint Chiefs of Staff, to a question from Congressman Whitehurst about the treaty's effect on "some kind of technological breakthrough, perhaps something beyond Spartan or Sprint in the state of the art." Admiral Moorer read agreed statement D and then said "there is no restraint on research and development."

Several comments about this reply are in order. First, Admiral Moorer did not differentiate between basing modes, that is, fixed, land-based versus mobile/space-based. Thus under the traditional interpretation, Admiral Moorer's statement is correct as it applies to fixed, land-based laser ABM's. Second, as I mentioned yesterday, the administration, which had been stung by Senator Jackson's criticism of an alleged canceled laser contract, was going to lengths to assure Congress that the then-current U.S. laser ABM Program—which was fixed, land-based—could go forward through the research and development stages. In sum, the statement does not contradict either interpretation; nor does it provide explicit support for this view. Finally, as I noted yesterday, Congress was expressly advised that the Chiefs were aware that the treaty permitted testing and development of exotics only in a fixed, land-based mode, they concurred in that view, and they understood it to be a fundamental part of the treaty.

Turning to postratification statements, in his 1985 submission to the Armed Services Committee, Judge Sofaer identified three cases in which official U.S. reports or statements noted that under the treaty, new ABM systems based on "other physical principles" could not be deployed. The three cases are: An October 23, 1972, speech at the United Nations by Ambassador Bush; the ACDA annual report for 1972; and Secretary Roger's foreign policy report of April 19, 1973. Judge Sofaer does not identify any aspect of these statement that directly addresses testing and development. As with the imprecise and incomplete Smith and Rogers statements which I discussed previously, brief statements to the effect that "exotics can not be deployed," but which are silent on the question of limits on development and testing, cannot be read as compelling any particular interpretation of the treaty.

These statements are totally consistent with either statement, either the broad interpretation or the narrow interpretation or the so-called traditional view or the reinterpretation.

Since 1972, the Arms Control and Disarmanent Agency has prepared five editions of a publication containing the texts of the principal arms control agreements to which the United States is a party, accompanied by brief narrative descriptions of the texts and the history of the negotiations which led to the agreements.

Each edition, including the most recent—1982—contains a paragraph relevant to the issue of exotics. In his 1985 submission to the committee, Judge Sofaer quotes the following excerpt from the 1982 ACDA compilation report:

Should future technology bring forth new ABM systems "based on other physical principles" than those employed in current systems, it was agreed that limiting such systems would be discussed, in accordance with

the treaty's provisions for consultation and amendment.

Judge Sofaer cites this in his review of subsequent practice for the proposition that: "ACDA's periodic compilation of arms control agreements has consistently supported the 'broad' view of the Treaty." He maintains that although the record of U.S. statements between 1972 and 1985 is "mixed," "the one document that tracks the issue over the 1972-1982 period—the ACDA publication "Arms Control and Disarmament Agreements"—appears to reflect that future systems are regulated only by Agreed Statement D."

There are a number of problems with Judge Sofaer's effort to represent this ACDA publication as a definitive and consistent endorsement of the reinterpretation. As with similar statements made during the ratification hearings, the ACDA report does not compel any particular interpretation of the treaty. It is entirely consistent with either the traditional view—under which exotics may be tested or developed in a fixed, land-based mode, which was then the focus of U.S. research—or the reinterpretation permitting testing and development of all exotics. The preface to the ACDA publication underscores the generality of its content, specifically noting that this material provides a "brief narrative discussion" of the treaties contained therein.

Another difficulty—and I would say this is a key difficulty—is that in his 1985 submission to the Senate Armed Services Committee, Judge Sofaer omitted the crucial first sentence of this paragraph which is being heavily relied on in his analysis as a statement which consistently supports the broad view. I would like to share with my colleagues that particular sentence, which was omitted. It reads:

> Further, to decrease the pressures of technological change and its unsettling impact on the strategic balance, both sides agree to prohibit development, testing, or deployment of sea-based, air-based, or space-based ABM systems and their components, along with mobile land-based ABM systems.

This sentence clearly ties to prohibitions in article V of the treaty against testing and development of mobile systems to the goal of decreasing "the pressures of technological change," thereby implying strongly that the treaty prohibits testing and development of mobile ABM systems which would incorporate future technologies. Judge Sofaer reinserted this sentence in his June 1986 article in the Harvard Law Review, but he fails in any way to deal with its implications for his analysis.

I do not cite this sentence as proving the traditional view. But what is amazing about this dialog and this exchange on this point is that the heart of what Judge Sofaer is relying on to support the broader view contains a sentence which he originally left out, and which implicitly supports the traditional view. So what we have here is that the heart of the case for the reinterpretation as it concerns subsequent practice has an omitted sentence which supports the traditional view, and the sentence which is quoted does not support either view. So an amazing sort of legalistic gymnastics is present here.

A more serious problem for the Sofaer analysis is its failure to reconcile the brief, narrative statement in ACDA's compilation of treaties with the executive branch's express treatment of the prohibition on testing and development of mobile exotics in the fiscal year 1979-86 arms control impact statements [ACIS]. This is typical of the case for the reinterpretation in that the brief ACDA narrative, which Judge Sofaer fails to identify as being a brief narrative, is quoted in full in the text, while the directly applicable analysis contained in the arms control impact statement prepared by the executive branch—is merely referenced in a footnote. It is particularly illogical for Sofaer to assert that a periodical compilation of agreements prepared by one agency (ACDA) should be held up as more revealing and authoritative than the arms control impact statements, which were meticulously prepared through a rigorous inter-agency process, including review by the NSC, and submitted, under close congressional scrutiny, on behalf of the President.

In summary, there are three main problems with Judge Sofaer's reliance on the ACDA compilation. First, the statement which he cites does not support the reinterpretation, and that is fundamental. It does not go to the question one way or the other. Second, the compilation does not purport to be a comprehensive statement of U.S. Government policy. Third, a far more authoritative and comprehensive statement is contained in the arms control impact statements, which were submitted to the Congress on behalf of the President for the express purpose of assisting the Congress in making policy decisions concerning the funding of U.S. defense programs.

Turning to the question of Soviet statements, Judge Sofaer does not rely on any Soviets statements in the case for reinterpretation, but notes that the few remarks by the Soviets on the subject are illuminating. He quotes only one Soviet statement, a 1972 speech by Marshall Grechko generally noting that the "Treaty imposes no limitations on the performance of research and experimental work aimed at resolving the problem of defending the country against nuclear missile attack."

Several comments about this statement are in order. First, Marshall Grechko does not define "experimental work."

He did not use the word "development," nor did he refer to "exotics" in that statement.

But even if he had said those words, and to get much out of his statement you have to assume he said those words—which he did not even if he had said "development," and even if he had linked it specifically to "exotics," that statement would have still been entirely consistent with the traditional view because the traditional view permits the testing and development of fixed, land-based ABM's using exotics. Because this statement makes no reference to mobile/spaced-based exotics, it is simply another general statement consistent with either view of the treaty. It does not reflect on one view or the other.

Judge Sofaer also states that the Soviets did not "begin explicitly to articulate the restrictive interpretation" until the new United States position was announced in October, 1985.

Now, that is an interesting bit of information, but it is not particularly helpful to the case for reinterpretation. The Soviets were on notice of United States adherence to the traditional view not only from the ratification debate, but also from the the official arms control impact statements noted above, and as far as available information shows, they made no objection to the traditional view of the treaty.

In other words, why should the Soviet Union have, prior to 1985, protested and said that we were, in effect, implementing the broad view when we were not and when during that whole period our own official publications said we were adhering to the traditional view.

So I do not think there would really have been a burden on them to comment during that time frame.

Finally, the administration has not provided any information to date demonstrating Solviet practices or statements expressly embracing the reinterpretation. Given the Reagan administration's repeated endorsement of the traditional interpretation in the annual Arms Control Impact Statements it submitted prior to October 1985, any violations of that view presumably would have been brought to the public's attention.

It is possible, of course, that the new administration review which is now under way will uncover some heretofore unknown Soviet activities or statements. I do not in any way contend I know everything the Soviet Union has said on this subject. We will have to rely on the administration for that as a source.

I am only commenting on what we know that has been submitted by the administration. It must be remembered, however, that subsequent statements and practices constitute evidence to be used on treaty interpretation but the context of the practices or statements is crucial. So we will not really be able to examine any statements we may be presented unless we see the overall context. If such evidence is unearthed by the administration, it would certainly have to be

weighed carefully in light of all relevant facts and circumstances.

Mr. President, in a speech which I intend to present tomorrow I will turn to the final element in this reinterpretation controversy, and that is the question of the treaty negotiating record itself.

Mr. COCHRAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, first, while my friend from Georgia is still on the floor, I commend him for the extraordinary effort that he has put into this analysis of the ABM Treaty. He is, as we all know, a Senator of immense distinction and we all put great credence in his word, in his intellectual powers, and in his integrity.

He is performing a function here for the Senate and for the country which nobody else really could perform as well.

I commend him, and we all are indebted to him for what he is doing.

Mr. NUNN. Mr. President, if the Senator from Michigan will yield briefly, I thank him for his kind remarks. I must say the Senator from Michigan was out in front of the Senator from Georgia on this one and has spent a lot of time, and the Senator from Michigan made a report himself which was of great help to me in preparation of my remarks and material.

I thank the Senator for his leadership and kind words.

Mr. LEVIN. I thank the Senator.

Mr. President, after reviewing the ABM Treaty issue, which I have been doing over the period of a year and a half, last December 1, I sent Secretary of State Shultz a detailed critique of the analysis of the ratification proceedings which had been prepared by Judge Sofaer and which the administration has been using to justify the new broad interpretation of the ABM Treaty. That analysis was presented publicly to the Senate in the form of an October 1985 memorandum and in the public testimony of Judge Sofaer before the Armed Services Committee of the Senate.

Now, in a response that was released to the press by the State Department the same day that I sent my December 1986 letter to Secretary Shultz, the State Department defended Judge Sofaer's evaluation as "a thorough, balanced analysis of the issues, more objective and complete than any prior study of the subject." In a letter to me on December 18, 1986, Assistant Secretary of State J. Edward Fox again defended Judge Sofaer's memorandum as reflecting "a thorough, objective review" which had been "carefully reviewed by appropriate officials in this Department, as well as by the designated representatives of other agencies." Mr. Fox rejected my criticisms, claimed that "(m)ost of the questions you now raise were discussed during congressional hearings and more than adequately answered," and invited me to meet with Ambassador Nitze and Judge Sofaer to discuss ABM Treaty issues.

I have taken them up on that offer, but it was not until this morning that the meeting could be arranged.

In my office today, Judge Sofaer explicitly and repeatedly disavowed the October 1985 memorandum regarding the ratification record of the ABM Treaty. He described it as an incomplete review of the ratification record which was prepared by young lawyers on his staff. He said he did not stand behind that memorandum, or those parts of his testimony before House and Senate committees based on that memorandum.

I must note three other points:

One, Judge Sofaer determined that the further review he is now conducting at the direction of the President will withstand public scrutiny.

Two, he has not changed his mind about the validity of the new interpretation of the treaty.

Three, he continues to defend the August 1986 classified memorandum analyzing the negotiating record, which is part of the documents located in the Capitol. That is a classified, private memorandum.

Mr. President, it is almost a year and a half since Judge Sofaer publicly presented to the Senate his memorandum relative to the ratification proceedings which gave support to a radical new interpretation of the ABM Treaty. Only now does he acknowledge that it was, at best, incomplete and that he failed to exercise his obligation to make sure that it was correct. His new found candor is welcome, however belated that it is. But I must say that I find that the way in which this matter was handled was inappropriate for the State Department's senior lawyer.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SIMON). Without objection, it is so ordered.

## TRADE ADJUSTMENT ASSISTANCE FUNDING

Mr. HEINZ. Mr. President, I rise to address this body on the subject of trade adjustment assistance. At the outset, I would like to explain that the Trade Adjustment Assistance Program represents the best effort that we have ever had, although not a perfect effort, by any means, to return workers who have lost their jobs due to imports—trade impacted workers, if you will—to meaningful employment. It is a flexible program which trains workers. It makes them eligible for training right up front and thereby it provides early action. It provides cash assistance to keep workers alive, for them to make ends meet while they retrain for new employment.

It does all the things that the President and the Congress and most outside experts say that we ought to do if we want to retrain somebody who has become unemployed through no fault of his own. It is the model displaced workers program.

Under this program, the Trade Adjustment Assistance Program, when a layoff or plant closing is a result of foreign competition, workers of the affected plant go through a certification process and they are certified for trade adjustment assistance benefits. And those benefits include up to 52 weeks of cash assistance, plus retraining, job search, and, if necessary, relocation assistance if the job that they find is a good distance away.

Now, that sounds spectacular, and when it works, it is. But it is only at this moment the sound that is nice because retraining skilled workers, however nice that may sound and however critical a component of our international competitiveness it may be, is at this moment totally meaningless. It is meaningless because the program that I have just described, the program that has been working, this process and support system that has given hope for a new life to so many workers, is totally out of money as of yesterday.

All of the funds available for training trade-impacted workers are gone as of this week. The fiscal year is only one-half over and we have spent all, every penny, of the $30 million made available in last year's continuing resolution for trade adjustment assistance training.

Workers—that includes in my home State of Pennsylvania textile workers, steel workers, mine workers, oil and gas workers, countless other workers, and maybe I should say former workers—who attempt to enroll in training programs this week or next week or next month or next summer when summer session starts are going to find that they are up against a locked door. The door is going to say we are out of business until Congress gets up and does something. They are all going to be turned away because we are doing nothing.

It is not the first time Congress has done nothing in the midst of a crisis but I suppose what makes it particularly poignant and difficult to bear is that we are talking as if we are doing a lot on the floor of this Senate.

Mr. President, every day we hear speeches, remarks, references to how important it is for this country to be competitive, how vital it is that we